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WASHINGTON, D. C. 20505

OLC 78-1590/B

Office of Legislative Counsel

JUN 1978

Mr. Simon Lazarus, Associate Director
Domestic Policy Staff
The White House
Washington, D.C. 20500

Dear Mr. Lazarus:

I am sorry we have not been able to make contact by telephone. I would like to bring to your attention our concerns with H.R. 9705, the so-called "Special Prosecutor legislation" recently reported out by the House Judiciary Committee.

Our interest in this legislation, detailed in a proposed report from the Director to Chairman Rodino submitted to the Office of Management and Budget last fall, relates to proposed section 595 of the new chapter 39 of title 28 of the United States Code. While proposed section 594 sets forth the powers and obligations of a Special Prosecutor, by providing generally that the Special Prosecutor would carry out matters within his jurisdiction by "stepping into the shoes" of the Department of Justice, proposed subsection 595(a) authorizes a Special Prosecutor to issue such public information concerning his activities as he deems appropriate without any limitations or special considerations. In this regard, proposed subsection 595(a), in our view, could be construed to go beyond the current authority of a Federal prosecutor to make public information relating to an investigation. The report of the House Judiciary Committee on H.R. 9705 (Rept. No. 95-1307, June 19, 1978) provides no additional detail in explanation of the authority provided in proposed subsection 595(a). While we would presume this authority would not give the Special Prosecutor the sole discretion to determine if national security information, to which he might have access in the course of an investigation, should be included in a public statement or report, the point is not as clear as we believe necessary. As noted in our proposed views letter, such a determination is the responsibility of the classifying agency or, in the case of information relating to intelligence sources and methods, the Director of Central Intelligence (50 U.S.C. 403). Given the nature of the Special Prosecutor's broad jurisdiction, and the absence of limiting language in proposed subsection 595(a) or in the legislative history, we believe steps should be taken to make clear that a Special Prosecutor does not have sole discretion to include national security information in a public report issued in accordance with this proposed subsection.

The Senate has passed Special Prosecutor legislation--S. 555-- containing similar though not identical proposed subsection 595(a). If this provision remains in the House bill, the issue may not be one that could be addressed at Conference. We therefore believe it necessary to address the issue before the House takes final action on H.R. 9705. Based on our discussions with the Office of Management and Budget, it is my understanding that you have agreed to work with us in addressing this issue prior to passage of the legislation by the House. We would appreciate the opportunity to discuss the matter with you in order to ensure that our concerns are resolved. We can arrange such a discussion if you would call my office or [] my staff.

We appreciate your interest and assistance in this matter.

Sincerely,

SIGNED

[]
Acting Legislative Counsel

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Next 2 Page(s) In Document Exempt

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